

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, California 95814**

NOTICE OF PROPOSED ACTION

**DATE: August 11, 2006
REGULATION FILE: RH05045983**

SUBJECT OF PROPOSED RULEMAKING

The Insurance Commissioner proposes to amend the regulations described below after considering comments from the public. The Commissioner proposes add California Code of Regulations, Title 10, Chapter 5, Subchapter 9, Article 1, §§ 2698.23 to 2698.27 (the “Life and Annuity Consumer Protection Program” regulation).

AUTHORITY AND REFERENCE

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code section 10127.17. Insurance Code section 10127.17 also provides the authority for this rulemaking.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: September 27, 2006, at 9:00 a.m.—1:00 p.m.

**Location: Employment Development Department
751 N Street, Room Solar 3
Sacramento, CA 95814**

The hearing will continue on the date noted above until all testimony has been submitted or 1:00 p.m., whichever is earlier.

REASONABLE ACCOMMODATION

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability who requires reasonable accommodation to attend or participate in a public hearing on the proposed regulations, may request assistance by contacting Elena Fishman, Staff Counsel, 300 Capitol Mall, 17th Floor, Sacramento, CA, 95814; telephone, 916-492-3507; fax, 916-324-1883. It is recommended that assistance be requested at least two weeks prior to the hearing.

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on **September 27, 2006**. Please direct all written comments to the following contact person:

Elena Fishman, Staff Counsel
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Telephone: (916) 492-3507

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

George Teekell, Staff Counsel
California Department of Insurance
45 Fremont Street
San Francisco, CA 94105
Telephone: (415) 538-4390

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, addressed to one of the contact persons at his respective address listed above, no later than 5:00 p.m. on **September 27, 2006**. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: fishmane@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Elena Fishman and sent to the following facsimile number: **(916) 324-1883**. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

Existing law generally regulates the sale and marketing of life insurance and annuities. Existing law requires the Insurance Commissioner to collect certain fees and assessments from insurers for regulatory purposes.

These regulations are a result of AB 2316 (Chapter 835, Statutes of 2004) which created the Life and Annuity Consumer Protection Fund which is funded from a \$1 fee levied against insurers based upon each individual life insurance and annuity product worth \$15,000 or more issued to a

resident of this state. The funds are dedicated to protecting consumers of insurance products and shall be distributed 50% to the department for consumer protection functions related to individual life insurance and annuity products, and 50% to district attorneys for investigation and prosecution of individual life insurance and annuity product financial abuse cases involving licensees and for other projects beneficial to insurance consumers. These provisions shall remain in effect until January 1, 2010.

The proposed regulations are modeled after the Department's fraud prevention grant program regulations which provide funds to District Attorneys for a variety of fraud prevention activities. The purpose of the proposed regulations is to set forth the specific details of how and when the fee assessment will be conducted for life insurers and the procedures and requirements for the grant program to district attorneys. The proposed regulations are necessary to provide a regulatory framework to assess and ensure the payment by life insurers of the appropriate fee as well as the quality of the district attorney programs funded by grants under this statute.

Effect of Proposed Action

The proposed regulations define the Life and Annuity Consumer Protection Program that will provide additional resources to bolster the ability of both District Attorneys and Department of Insurance investigators to actively and aggressively investigate and prosecute cases of life insurance and annuity financial abuse which have increased dramatically over the past few years.

The proposed regulations identify the specific type of policies subject to the fee assessment, the beginning date of the assessment, how frequently the assessment will be made, the methodology used by the Department to conduct the assessment, timelines for completing the assessment and information about late fees. The proposed regulations also define how an annuity shall be valued for purposes of this statutory fee assessment. The proposed regulations establish the amount of funds available for the Department and the amount of funds available for distribution to district attorneys through grants as well as describing the authorized uses of said funds. These sections will provide details and clarity to insurers regarding how and when to assess the fee and to District Attorneys in applying for grants through the Program.

The proposed regulations notify and inform District Attorneys of the specific criteria that will be used by the Department to evaluate grant applications as well as describe in detail the required contents of an application for funding. The proposed regulations also provide notice to District Attorney grantees of the reporting requirements and due dates for grants. The proposed regulations inform the grantees of the special process to be followed for multi-year grants or grant renewal.

The proposed regulations provide information about the services the Commissioner may provide to the grantee; how the Commissioner will monitor performance under the grant and how unsatisfactory performance by the grantee will be handled; how unused funds will be reallocated; the Commissioner's right to review, reproduce, monitor and audit the records of the grantee; the grantees duties regarding records management and retention; the Commissioner's rights and the grantee's responsibilities regarding auditing the grant; and, the cause for termination of the grant by the Commissioner or the grantee as well as applicable timelines. These sections will provide

grantees with detailed information in advance about how various aspects of the grant will be handled by the Commissioner.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulations may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. As described above, certain insurers will for the first time be required to count the number of new life insurance policies and annuity contracts valued over \$15,000 written during a certain time period. They will also be required to perform an on-line self-assessment and submit payment to the Department of the appropriate amount. The types of businesses that may be affected are life insurers. The Commissioner has not considered proposed alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Commissioner has determined that for certain insurance companies (life insurers) that are exempt under current regulations, and as such are not required to perform a count of the new life and annuity policies valued over \$15,000 issued during a time period or conduct an on-line self-assessment and submit payment to the Department as required, there may be an additional cost impact. The additional costs may include identifying the number of life and annuity policies sold with a value of over \$15,000, conducting the on-line self-assessment and submitting the required fee to the Department.

However, for many life insurance companies, the impact has already been mitigated by the fact that they are required to annually report life insurance and annuity sales to the National Association of Insurance Commissioners (NAIC) and many life insurers have developed systems and procedures to handle fee assessments required by prior legislation. The Commissioner is not aware of any costs that the proposed regulations will have on private persons or business entities other than described above but invites interested parties to comment on the issue.

FINDING OF NECESSITY

The Commissioner finds that it is necessary for the welfare of the people of the state that the regulations apply to businesses.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on the issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The Commissioner has determined that the proposed regulations will not affect small business. Pursuant to Government Code section 11342.610, subdivision (b), paragraph (2), insurers are not small businesses.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this

proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 300 Capitol Mall, 17th Floor, Sacramento, California 95814, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find, near the top of the leftmost column, the pull down menu under the heading "Quick Links." Select the "Legal Information" link. On the "Legal Information" page, click on the "Proposed Regulations" link. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

- To search, enter "RH05045983" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (for instance, "10127.17") or search by keyword ("life", "annuity", "consumer protection" for example). Then, click on the "Submit" button to display links to the various filing documents.
- To browse, click on the "Browse All Regulations" button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the "Life and Annuity Consumer Protection Program Regulations" link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.